

Executive Summary

R657-48. Wildlife Species of Concern and Habitat Designation Advisory Committee

This rule: 1) establishes the Wildlife Species of Concern and Habitat Designation Advisory Committee, 2) defines the procedure for designating wildlife species of concern as part of a process to preclude listing under the federal Endangered Species Act, and 3) defines the procedure for review and identification of wildlife habitat and management recommendations relating to significant land use development projects.

The proposed revisions to this rule: 1) define the Utah Sensitive Species List, 2) give the Division direction for maintaining the Utah Sensitive Species List, 3) remove approval of habitat designation by replacing references to the Resource Development Coordinating Committee, 4) add the Director of the Utah Public Lands Policy Coordination Office to the Wildlife Species and Habitat Designation Advisory Committee, and 5) make technical corrections.

R657-48. Natural Resources, Wildlife Resources.

R657-48. Wildlife Species of Concern and Habitat Designation Advisory Committee.

R657-48-1. Authority and Purpose.

- (1) Pursuant to Sections 23-14-19 and 63-34-5(2)(a) of the Utah Code, this rule:
- (a) establishes the Wildlife Species of Concern and Habitat Designation Advisory Committee;
 - (b) defines its purpose and relationship to local, state and federal governments, the public, business, and industry functions of the state;
 - ~~{and}~~(c) defines the Utah Sensitive Species List; and
 - ~~{{e}}~~(d) defines the procedure for:
 - (i) the designation of wildlife species of concern as part of a process to preclude listing under the ESA; and
 - (ii) review, identification and analysis of wildlife habitat designation and management recommendations relating to significant land use development projects.

R657-48-2. Definitions.

- (1) The terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
- (a) "Committee" means the Wildlife Species of Concern and Habitat Designation Advisory Committee.
 - (b) "Conservation species" means wildlife species or subspecies that are currently receiving special management under a conservation agreement developed or implemented by the state to preclude the need for listing under the ESA.
 - (c) "Department" means the Department of Natural Resources.
 - (d) "Division" means the Division of Wildlife Resources within the Department.
 - (e) "ESA" means the federal Endangered Species Act.
 - (f) "Executive Director" means Executive Director of the Department.
 - (g) "Habitat identification material" means maps, data, or documents prepared by the Division in the process of specifying wildlife habitat.
 - (h) "Management recommendations" means determinations of, amount of, level of intensity, timing of, any restrictions, conditions, mitigation, or allowances for activities proposed for a project area pursuant to this rule.
 - (i) "NEPA" means the National Environmental Policy Act as defined in 42 U.S.C. Section 4321-4347.
 - (j) "Interested Person" means an individual, firm, association, corporation, limited liability company, partnership, commercial or trade entity, any agency of the United States Government, the State of Utah, its departments, agencies and political subdivisions.
 - (k) "Project area" means the geographical area covered by a significant land use development.
 - (l) "Proposed wildlife habitat designation" means identified habitat in a project area undergoing review pursuant to this rule.

~~{{(n)}}(m)~~ "Significant land use development" means any project or development identified as such by the Executive Director, or as approved through petition as described in Section R657-48-5.

~~{{(e)}}(n)~~ "Wildlife habitat designation document" means the written decision of the Executive Director after following the provisions of this rule for wildlife habitat designation and management recommendations for a project area.

~~{{(e)}}(o)~~ "State sensitive species" means:

(i) wildlife species or subspecies listed under the ESA, and now or previously present in Utah;

(ii) ~~candidate~~ wildlife species or subspecies de-listed under the ESA ~~{now or }~~ during the past six months that are now or were previously present in Utah;

(iii) wildlife species or subspecies now or previously present in Utah that are currently proposed by the U.S. Fish and Wildlife Service for listing under ESA;

(iv) candidate wildlife species or subspecies under the ESA now or previously present in Utah;

(v) conservation species; or

~~{{(iv)}}(vi)~~ wildlife species of concern.

~~{{(e)}}(p)~~ "Wildlife habitat designation" means the wildlife habitat identification within a project area issued pursuant to this rule.

~~{{(r)}}(q)~~ "Wildlife habitat identification" means the description, classification and assignment by the Division of any area of land or bodies of water as the habitat, range or area of use, seasonally, historically, currently, or prospectively of or by any species of game or non-game wildlife in the State of Utah.

~~{{(e)}}(r)~~ "Wildlife species of concern" means a wildlife species or subspecies within the state of Utah for which there is credible scientific evidence to substantiate a threat to continued population viability.

(s) "Wildlife species of concern designation" means the decision to bestow wildlife species of concern status on a wildlife species or subspecies, or remove wildlife species of concern status from a wildlife species or subspecies, pursuant to this rule.

(t) "Utah Sensitive Species List" means the list of all current state sensitive species.

R657-48-3. Department Responsibilities.

(1) There is established a Wildlife Species of Concern and Habitat Designation Advisory Committee within the Department of Natural Resources.

(2) The Department shall provide staff support, arrange meetings, keep minutes, and prepare and distribute final recommendations.

R657-48-4. Committee Membership and Procedure.

(1) Committee membership shall consist of:

(a) the Executive Director of the Department;

(b) the Director of the Utah Public Lands Policy Coordinating Office or a designee;

(c) the Director of the Division or a designee;

~~[(e)](d)~~ the Director of the Division of Oil, Gas and Mining or a designee;
~~[(d)](e)~~ the Director of the Division of Water Resources or a designee; and
~~[(e)](f)~~ any other Department Division heads or designees as determined by the Executive Director of the Department.

(2) The Executive Director shall serve as chair.

(3) Three members, consisting of the Executive Director, the Division Director and the Director of the Division of Oil, Gas & Mining, shall constitute a quorum for meetings of the Committee.

(4) The Committee shall meet as specified by the Executive Director.

(5) The following procedure shall be used for submitting review items to the Executive Director for inclusion on the Committee agenda:

(a) the Division Director shall submit for committee review all proposed wildlife species of concern designations; and

(b) the Division Director shall submit for committee review any proposed or existing wildlife habitat ~~[designation]~~ designations and corresponding management recommendations within a project area.

(i) The Division shall support its proposals for wildlife species of concern designations, wildlife habitat ~~[designation]~~ designations and management recommendations with:

(A) studies, investigations and research supporting the need for the ~~[designation]~~ designations and the potential impacts of each proposal;

(B) field survey and observation data; and

(C) federal, state, local and academic information on habitat, historical distribution, and other data or information collected in accordance with generally accepted scientific techniques and practices.

~~[(7)](6)~~ The Department will provide an analysis of potential impacts of the proposed designations and the existing social and economic needs of the affected communities and interests.

R657-48-5. Public Participation and Setting of Meeting Agenda.

(1) An interested person may petition the Executive Director for a hearing before the Committee to designate a project as a significant land use development for purposes of this rule.

(2) The Executive Director shall act to approve or disapprove a petition or extension request within 14 calendar days.

(3)(a) The agenda shall consist of items determined by the Executive Director, and copies shall be sent to Committee members and other interested persons as requested.

(b) The agenda shall be distributed at least 28 calendar days prior to the meeting.

(c) Requests to receive notices and agendas must be submitted in writing to the Executive Director's Office as provided in Subsection R657-48-9(1).

(4) Any interested person may:

(a) submit comments on proposed wildlife species of concern and wildlife habitat designations;

- (i) comments must be submitted in writing to the Executive Director for review and must be submitted at least seven calendar days prior to the meeting;
- (b) request an extension of up to 30 calendar days to review a proposed Committee action; or
- (c) request to make an oral presentation before the Committee.
- (i) An interested person seeking to make a presentation before the Committee concerning any matter under review, must submit a written request and supporting documentation to the Executive Director at least 14 calendar days prior to the meeting.

R657-48-6. Committee Review Actions.

- (1) In conducting a review of issues, the Committee may:
 - (a) require additional information from the Division, the Department or interested persons;
 - (b) require the Division or interested persons to make presentations before the Committee or provide additional documentation in support or opposition of the recommendation;
 - (c) schedule additional meetings where public interest or agency concern merits additional discussion;
 - (d) undertake additional review functions as needed; or
 - (e) consider the need for involvement of other persons or agencies, or whether other action may be needed.
- (2) Following the Committee's review and recommendation, the Executive Director shall:
 - (a) make a final determination and, if warranted, recommend the approval of any or all proposed wildlife species of concern designations to the Wildlife Board; or
 - (b) in the case of proposed wildlife habitat ~~[designation]~~ designations, make a final determination.
- (3) The Executive Director's decision will be announced at that meeting, or the next formal meeting, on the proposed wildlife species of concern designations or habitat ~~[designation]~~ designations, unless an alternative time is required by federal or state law, or rule.

R657-48-7. Wildlife Species of Concern Designation Process.

- (1) A wildlife species of concern designation shall be made only after the Executive Director, following consideration of the Committee's recommendations, has made a formal written recommendation to the Wildlife Board, and after that Board has considered:
 - (a) the Executive Director's recommendation, and all comments on such recommendation; and
 - (b) all data, testimony and other documentation presented to the Committee and the Wildlife Board pertaining to such proposed designation.
- (2) All wildlife species of concern designations shall be made:
 - (a) pursuant to the procedures specified in this rule; and
 - (b) as an independent public rulemaking pursuant to the Administrative Rulemaking Act, Title 63, Chapter 46(a) of the Utah Code.

(3) With ~~[proposed rule]~~ each proposed wildlife species of concern designation, the accompanying analysis shall include either a species status or habitat assessment statement, a statement of the habitat needs and threats for the species, the anticipated costs and savings to land owners, businesses, and affected counties, and the inclusion of the rationale for the proposed designation.

(4) The Wildlife Board may approve, deny or remand the proposed wildlife species of concern designation to the Executive Director.

(5) Until a proposed wildlife species of concern designation is finalized, the proposed designation may not be used or relied upon by any governmental agency, interested person, or entity as an official or unofficial statement of the state of Utah.

(6) The Division shall maintain all data collected and other information relied upon in developing proposed wildlife species of concern designations as part of the administrative record and make such information available, subject to the Government Records Access and Management Act as defined in Section 62-2-101, for public review and copying upon request.

(7) The Division shall maintain the Utah Sensitive Species List and update the list as necessary to maintain consistency with Subsection R657-48-2(2)(o) as the statuses of sensitive species change due to one or more of the following:

- (a) wildlife species of concern or other wildlife species are listed under ESA;
- (b) wildlife species are de-listed under ESA;
- (c) wildlife species' names change due to taxonomic revisions;
- (d) new wildlife species of concern are designated pursuant to this rule;
- (e) wildlife species of concern status is removed from species pursuant to this rule;
- (f) conservation agreements are developed and implemented for species;
- (g) conservation agreements become invalid;
- (h) species become candidates for listing under ESA;
- (i) species lose candidate status under ESA;
- (j) species are formally proposed for listing under ESA by the U.S. Fish and Wildlife Service; or
- (k) species lose proposed status under ESA.

(8) If a species designated as a wildlife species of concern is listed under ESA, is proposed for listing under ESA, becomes a candidate for listing under ESA, or becomes a conservation species, the changed species status will be reflected in the Utah Sensitive Species List. If the species subsequently loses its ESA status or the conservation agreement becomes invalid, the species will revert to wildlife species of concern status.

R657-48-8. Wildlife Habitat Designations and Management Recommendations.

(1) Wildlife habitat designations and management recommendations for project areas will be made pursuant to the procedures specified by this rule.

(2) Any Department or Division map, identification of habitat, document or other material that is provided or released to, or used by any persons, including federal agencies, which includes wildlife habitat designations that have been adopted under this rule will so indicate.

(3) A proposed wildlife habitat designation and management recommendation shall be adopted by the Executive Director only after the Executive Director, following consideration of the Committee's recommendations, has considered all data, testimony and other documentation presented to the Committee pertaining to such proposed designation.

~~{{(6)}}~~(4) Until a final determination on a proposed wildlife habitat and management recommendation has been made by the Executive Director, the proposed wildlife habitat or management recommendations may not be used or relied upon by any other governmental agency, interested person, or entity as an official or unofficial statement of the state of Utah.

~~{{(7)}}~~(5) A Wildlife Habitat Designation document developed for the purpose of this rule, having been completed by the Executive Director, shall be attached to the wildlife habitat identification materials and made available for public review or copying upon request.

~~{{(8)}}~~(6) The Division shall maintain all data collected and other information relied upon in developing proposed wildlife habitat designations and management recommendations as part of the administrative record, and make this information available in accordance with the Government Records Access and Management Act as defined in Section 62-2-101, for public review and copying upon request.

R657-48-9. Distribution.

(1) The Division shall send by mail or electronic means a copy of a proposed wildlife species of concern designation or wildlife habitat and management determination established under this rule to the following:

(a) any person who has requested in writing that the ~~{division}~~ Division provide notice of any proposed wildlife species of concern designations or proposed wildlife habitat and management recommendations under this rule; and

(b) county commissions and tribal governments, which have jurisdiction over lands that are covered by a proposed wildlife habitat designation and management recommendation and of lands inhabited by a species proposed to be designated as a wildlife species of concern under this rule.

(2) ~~{Species}~~ Wildlife species of concern designations, wildlife habitat designations or management recommendations may not be used by governmental entities as a basis to involuntarily restrict the private property rights of landowners and their lessees or permittees.

KEY: species of concern, habitat designation

Date of Enactment or Last Substantive Amendment: June 13, 2001

Notice of Continuation: not applicable (new as of June 13, 2001)

Authorizing, and Implemented or Interpreted Law: 23-14-19; 63-34-5(2)(a)

NOTE: Last recommended updates added April 14, 2006.